



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/467,928	12/21/1999	DAVID GAILLAC	017753-120	2965

21839 7590 05/20/2003

BURNS DOANE SWECKER & MATHIS L L P  
POST OFFICE BOX 1404  
ALEXANDRIA, VA 22313-1404

EXAMINER

PARKIN, JEFFREY S

ART UNIT	PAPER NUMBER
----------	--------------

1648

DATE MAILED: 05/20/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Applicati n No.

09/467,928

Applicant(s)

GAILLAC ET AL.

Examiner

Jeffrey S. Parkin, Ph.D.

Art Unit

1648

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 April, 2003, FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 03 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see item 10 below and attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-12.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See Continuation Sheet

  
LAURIE SCHEINER  
PRIMARY EXAMINER

Continuation of 10. Other: Applicants are advised that the IDS filed 28 April, 2003, has been placed in the application file but the information contained therein has NOT been considered. Applicants are reminded of the requirements set forth under 37 CFR 1.97 which stipulates that all IDSs filed after final MUST have an accompanying statement pursuant to 37 CFR 1.97(e). No such statement accompanied the filing. Applicants' proposed amendment addresses some of the concerns set forth under 35 USC 112, second paragraph. However, the phrase "about +50 deg. C" remains vague and indefinite since the precise metes and bounds cannot be ascertained. Applicants' arguments have been considered but are not deemed to be persuasive for the reasons of record previously set forth. Applicants assert that the echoviruses and adenoviruses are structurally and functionally different in terms of virion stability. However, the response fails to provide any evidence in support of this assertion. For instance, what are the particular reaction conditions (i.e., pH, temperature, solvent) that lead to the inactivation of adenoviruses, but not echoviruses? Absent such a showing, the teachings of Kameyama et al. seem particularly a propos to the claimed invention. They clearly illustrate that non-enveloped viruses remain stable after treatment with 0.3% (w/v) TNBP and 1.0% (w/v) Tween 80, whereas enveloped viruses do not. Thus, the claimed invention is prima facie obvious in view of the prior art.